



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Mailing Date: March 15, 2019

Robert Delaware
MuckRock News
DEPT MR 68538
411A Highland Avenue
Somerville, Massachusetts 02144-2516

PSP/RTKL Request № 2019-0132

Dear Mr. Delaware:

On February 6, 2019, the Pennsylvania State Police (PSP) received your request for records pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P. S. §§ 67.101 – 67.3104, wherein you wrote:

"Respectfully, this is a request for the release of the original Surveillance video from the Dale Kerstetter disappearance in September of 1987. The Pennsylvania State Police is in possession of a grainy surveillance video from 1987 that shows the last known footage of Dale Kerstetter, along with a masked man who is suspected in robbing platinum from Corning Glasswork factory."

A copy of your request is enclosed. By letter dated February 13, 2019, you were notified in accordance with RTKL Section 67.902(b)(2) that PSP required an additional 30 days to prepare this final response to your request.

Your request for "surveillance video" is denied to the extent that the responsive record you seek is a component of PSP Initial Crime Report No. 05-270517 and is not accessible to the public. The RTKL defines a "public record" as "[a] record . . . of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege." 65 P.S. § 67.102.

Following the first limitation, the RTKL specifically limits disclosure of the requested record because it was created, received or retained pursuant to the documentation of a PSP investigation into a complaint of criminal activity. Thus, the report and each of its components is "[a] record of an agency relating to or resulting in a

criminal investigation," which is exempt from public disclosure under RTKL section 67.708(b)(16). Furthermore:

- The report contains "[c]omplaints of potential criminal conduct other than a private criminal complaint[.]" and, thus, is exempt from public disclosure under RTKL section 67.708(b)(16)(i).
- Because it reflects the findings and conclusions, as well as the actions, observations and notes of investigating troopers, the reports' components constitute "[i]nvestigative materials, notes, correspondence, . . . and reports," all of which are exempt from public disclosure under RTKL section 67.708(b)(16)(ii).
- In its entirety, as well as in its components, the report is "a record that, if disclosed, would . . . [r]eveal the institution, progress or result of a criminal investigation," and, therefore, exempt from public disclosure under RTKL section 67.708(b)(16)(vi)(A).
- The report includes "victim information," (e.g., the victim's full name, birth date, residential address and the telephone number) and, thus, is exempt from public disclosure under RTKL section 67.708(b)(16)(v).
- The report also contains personal identification information, including residential addresses and the telephone numbers of witnesses, all of which are exempt from public disclosure under RTKL section 67.708(b)(6)(i)(A).
- Yet, none of the reports' components comprise original records of entry, a chronology of arrests, the identification of arrested individuals, the specification of criminal charges or any other "information contained in a police blotter as defined in 18 Pa.C.S. § 9102." *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 478 n.4 (Pa. Commw. Ct. 2010) (en banc).

A supporting verification accompanies this letter.

Following the second limitation, disclosing the report or its components to you would violate Pennsylvania's *Criminal History Record Information Act* (CHRIA), 18 Pa. C.S. §§ 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies. 18 Pa. C.S. § 9106(c)(4). CHRIA defines "investigative information" as "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing." 18 Pa. C.S. § 9102. Therefore, PSP is barred by CHRIA from providing you with access to the records you have requested. See

McGarvey v. Pa. State Police, OOR Docket N° AP 2009-0522 (Glenn) (CHRIA section 9106 protects criminal investigation report, in its entirety, from public disclosure).

To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should this response to your request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under RTKL and CHRIA.

You have a right to appeal this response in writing to the Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. The pertinent OOR appeal form is available for your use at, <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. If you choose to appeal, within 15 business days of the mailing date of this response, you must send to OOR:

- 1) this response;
- 2) your request; and
- 3) the reason(s) why you think the agency wrongfully denied your request.
(a statement addressing any grounds provided by the agency for denying you access to the records you seek). If the agency gave several reasons why your access is denied, state which reasons you think are wrong.

Sincerely,



Kim Grant
Deputy Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Law/Subpoena Section
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
RA-psrighttoknow@pa.gov
1.877.785.7771 (Main) | 717.525.5795 (Fax)

Enclosures: RTK Request, Tracking N° 2019-0132
Grant Verification

PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS

VERIFICATION OF
KIM GRANT
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Kim Grant, Deputy Agency Open Records Officer of the Pennsylvania State Police (variously, PSP or Department), am authorized to prepare this verification in response to PSP/RTKL Request N° 2019-0132. Accordingly, on this 15th day of March, 2019, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2019-0132, which is attached to this verification.
2. Utilizing the information contained in the request, I searched all Departmental databases, to which I have access, for evidence of any PSP records that may respond to the request.
3. I have determined the requested record was created, received or retained pursuant to the documentation of a PSP investigation into a complaint of criminal activity. PSP Initial Crime Report No. 05-270517 and its component records, which includes "surveillance video," are not a "public record" as defined by section 102 under the RTKL and are exempt from public disclosure. Furthermore:
 - a. The report contains "*[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing,*" 18 Pa.C.S. § 9102, and, thus, is exempt from public disclosure under RTKL section 67.708(b)(16)(i).
 - b. The report's component records reflect the findings and conclusions, as well as the actions, observations and notes of investigating troopers, thus constituting "*investigative materials, notes, correspondence, . . . and*

reports," all of which are exempt from public disclosure under RTKL section 67.708(b)(16)(ii).

- c. Based on its content, the report is clearly "*a record that, if disclosed, would reveal the institution, progress or result of a criminal investigation,*" and, therefore, exempt from public disclosure under RTKL section 67.708(b)(16)(vi)(A).
 - d. The report includes "victim information," (e.g., the victim's full name, birth date, residential address and telephone number) and, thus, is exempt from public disclosure under RTKL section 67.708(b)(16)(v).
 - e. The report also contains personal identification information, including residential addresses and the telephone numbers of witnesses, all of which are exempt from public disclosure under RTKL section 67.708(b)(6)(i)(A).
 - f. Yet, none of the report's components comprises original records of entry, a chronology of arrests, the identification of arrested individuals, the specification of criminal charges or any other "*information contained in a police blotter as defined in 18 Pa.C.S. § 9102.*"
4. Furthermore, disclosing the report or its components to the requestor would violate Pennsylvania's Criminal History Record Information Act (CHRIA), 18 Pa. C.S. sections 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies.
5. Accordingly, I withheld this record from public disclosure.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Kim Grant

**Deputy Agency Open Records Officer
Pennsylvania State Police**

2019-0132

2/13/19

Zeltmann, Rachel

RECEIVED

RIGHT-TO-KNOW LAW OFFICE
SUBPOENA UNIT

From: 68538-29208024@requests.muckrock.com
Sent: Wednesday, February 6, 2019 4:28 AM
To: SP, PSP RIGHT TO KNOW
Subject: [External] Pennsylvania Right to Know Act Request: PSP: September 1987 - Dale Kerstetter surveillance video - Corning Glassworks
Attachments: 2019 FEB - b A h: 21 PA_Right_to_Know_Request_Form.pdf

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Pennsylvania State Police
RTK Office
1800 Elmerton Avenue
Harrisburg, PA 17110

February 6, 2019

To Whom It May Concern:

Pursuant to the Pennsylvania Right to Know Act, I hereby request the following records:

Respectfully, this is a request for the release of the original surveillance video from the Dale Kerstetter disappearance in September of 1987. The Pennsylvania State Police is in possession of a grainy surveillance video from 1987 that shows the last known footage of Dale Kerstetter, along with a masked man who is suspected in robbing platinum from a Corning Glassworks factory.

This is a request for the release of that video, using the logic that the case is very cold, and that the release of the original video will generate more attention to the case, and possibly more leads.

Some additional background:

Kerstetter was a security guard at Corning Glassworks who disappeared around September 12th of 1987. The Corning Glassworks factory was robbed of platinum at the same time. There is a video from the night of the Kerstetter disappearance that shows him and a masked intruder.

A reenactment of this video was shown during an episode of the television program "Unsolved Mysteries" that aired several years after Mr. Kerstetter's disappearance.

This case remains unsolved, and is a topic of conversation on countless internet forums, podcasts, and YouTube videos.

Mr. Kerstetter's family has taken to giving interviews where they acknowledge that Mr. Kerstetter is either dead, or was likely complicit in the crime.

Members of the Kerstetter family have been openly cooperating with the media in hopes of generating additional coverage of this case.

This is the kind of cold case where the release of additional information - in this instance an old surveillance video - is bound to generate additional attention. Please consider this a request for the release of this video.

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RIGHT-TO-KNOW LAW OFFICE
SUBPOENA UNIT

Here is an example of the coverage this unusual case has received:

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<https://www.youtube.com/watch?v=VBAZYQf365I>
<https://lostnfoundblogs.com/f/dale-kerstetter-gone-platinum>
<https://www.crimewatchpa.com/crimestoppers/316/cases/media-release-2305-missing-person-theft-dale-irwin-kerstetter-unknown-suspects-%E2%80%93-bradford>
http://www.oleantimesherald.com/news/kerstetter-disappearance-missing-platinum-more-than-years-ago-still-an/article_7e0eb8d8-c857-11e8-97cf-0764eaa5fbf9.html
<https://www.stitcher.com/podcast/ed-dentzel/unfound/e/56804314>

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Robert Delaware

Filed via MuckRock.com

E-mail (Preferred): 68538-29208024@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/pennsylvania-state-police-435/psp-september-1987-dale-kerstetter-surveillance-video-corning-glassworks-68538/?uuid-login=3efa3230-177c-4c36-9769-a66707ee0e30&email=RA-psprighttoknow%40pa.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 68538
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.





RECEIVED
RIGHT-TO-KNOW LAW OFFICE
SUBPOENA UNIT

2019 FEB -6 A 6:21

pennsylvania
OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 2019-02-06

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Pennsylvania State Police

1800 Elmerton Avenue, Harrisburg, PA 17110

NAME OF REQUESTER : Robert Delaware

STREET ADDRESS: Dept MR 68538 411A Highland Ave

CITY/STATE/COUNTY/ZIP(Required): Somerville, MA 02144-2516

TELEPHONE (Optional): _____ **EMAIL (optional):** 68538-29208024@requests.muckrock.com

RECORDS REQUESTED: *Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary

See Attached

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*